

Court No. - 46

Case :- APPLICATION U/S 528 BNSS No. - 14450 of 2025

Applicant :- Gambhir And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Balbeer Singh

Counsel for Opposite Party :- G.A.

Hon'ble Jitendra Kumar Sinha,J.

1. Heard Sri Sunil Kumar holding brief of Sri Balbeer Singh, learned counsel for the applicants and learned A.G.A. for the State respondents.
2. The contention of learned counsel for the applicants is that the learned Magistrate has taken cognizance of the same offence twice, which is not permissible as per law.
3. Learned counsel submits that earlier an FIR was registered under Sections 452, 323, 504 of IPC and after investigation charge sheet was submitted under Sections 323, 504 of IPC against the applicant. The learned Magistrate took cognizance of the offence under Sections 323, 504 of IPC.
4. The respondent no.2 moved an application under Section 156(3) Cr.P.C. of the same incident, which was rejected by the learned Magistrate.
5. The respondent no.2 again filed Criminal Revision before the learned Sessions Court, which was allowed and the case was remanded back to the learned Magistrate. On remand, the learned Magistrate treated the application under Section 156(3) Cr.P.C. as a complaint case and proceeded to record the statement of the complainant under Section 200 Cr.P.C. and witnesses under Section 202 Cr.P.C. After examining the contents of the statement of complainant and the witnesses, the learned Magistrate has passed the order impugned.
6. Learned counsel for the applicants submits that the order impugned is wholly illegal and without jurisdiction as the cognizance of the same incident cannot be taken twice.
7. Per contra, learned AGA has opposed the application and submits that the learned Magistrate has taken cognizance after perusing the statements of the complainant and the witnesses. However, he concedes that the cognizance of the same offence

cannot be taken twice.

8. In view of the above, matter requires consideration.

9. Issue notice to opposite party no.2 returnable at an early date.

10. All the respondents are granted four weeks time to file counter affidavit. The applicants shall have three weeks thereafter to file rejoinder affidavit.

11. List immediately thereafter before the appropriate Bench as fresh.

12. It is directed that till the next date of listing, no coercive process shall be taken against applicants in Complaint Case No.28830 of 201523 (Lalit Jain Vs. Gambhir and others), under Section 323, 354, 506 of IPC, Police Station Achhenera, District Agra, pending in the Court of Additional Chief Judicial Magistrate, Court No.10, Agra.

13. It is made clear that if the learned counsel for the applicants does not argue the matter on the next date fixed, the interim protection granted above shall automatically be vacated.

Order Date :- 9.6.2025

RKM